

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No. 23-10831 (MFW)
LORDSTOWN MOTORS CORP.,
(Jointly Administered)
Courtroom No.
824 Market Street
Debtors. Wilmington, Delaware 19801
Tuesday, October 31, 2023
10:30 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MARY F. WALRATH
CHIEF UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 (Proceedings commenced at 10:30 a.m.)

2 THE COURT: All right. Good morning. This is
3 Judge Walrath. We're here in the Lordstown Motors case
4 continued from last week.

5 I'll turn it over to counsel for the debtor to
6 tell me where they are.

7 MS. PATTERSON: Thank you, Your Honor. Good
8 morning. Morgan Patterson, of Womble Bond Dickinson, on
9 behalf of the debtor, and as you noted, Your Honor, we are
10 here this morning in Lordstown on our disclosure statement
11 hearing.

12 If it's okay with Your Honor, I'll turn it over to
13 my co-counsel, Mr. Turetsky, at White & Case, to let Your
14 Honor know where we stand.

15 THE COURT: Thank you.

16 MR. TURETSKY: Good morning, Your Honor. David
17 Turetsky, of White & Case, for the debtors.

18 It's good to see you again and thank you for
19 making time for us this morning.

20 I'm joined virtually, obviously, by Delaware co-
21 counsel, and also my partner, Roberto Kampfner, who will be
22 available to address any questions that Your Honor has with
23 respect to the proposed disclosure statement or the
24 solicitation procedures and what not.

25 Your Honor, thank you again for making time for

1 us. When we were before you last week, we had just filed our
2 Amended Plan and Amended Disclosure Statement which had the
3 support of the Creditor's Committee and the Equity Committee,
4 but we also had six disclosure statement objections before us
5 and, frankly, to give Your Honor some additional time with
6 the documents and the debtors and the objecting parties, some
7 additional time to work through the issues, we asked for this
8 hearing to be continued to today and we view today as a very
9 important day because, as Your Honor knows, the debtors have
10 been working hard to try and resolve these Chapter 11 cases
11 expeditiously, hopefully by year-end, and our hope is that,
12 coming out of today's hearing, we'll be able to start
13 soliciting on the Plan.

14 I'm pleased to report to Your Honor that, based
15 upon the work that the debtors have done, along with the
16 other objecting parties, and we've been in daily contact with
17 the objecting parties, we've resolved all of the disclosure
18 statement objections with the exception of one, which I'll
19 get to, and I'm not happy about that but that's just, you
20 know, where we are. I'd prefer it to be resolved, but
21 sometimes you can't resolve everything.

22 In terms of the resolutions, we're resolved
23 between what we filed in the form of the modified Plan on
24 Sunday night and the changes that were filed overnight. We
25 are resolved with the U.S. Trustee, the SEC, Foxconn, the

1 Delaware class plaintiffs and the lead plaintiff for the Ohio
2 class action.

3 With respect to the latter, Your Honor may have
4 noticed that there was a supplemental objection that was
5 filed this morning which was more in the nature -- and I'll
6 characterize it, having spoken with counsel to the Ohio class
7 claimants, as a reservation of rights with respect to
8 confirmation issues. That supplemental objection discloses
9 that the lead plaintiff and the debtors have been in
10 communications regarding the addition of language to resolve
11 disclosure statement objections. We've included that
12 language in what was filed and I'm advised that that
13 disclosure statement objection is resolved.

14 Obviously, all objections for all parties for
15 confirmation are reserved and so I don't want to -- I want to
16 make that very clear. These are disclosure statement
17 resolutions, not confirmation resolutions.

18 That leaves us with the lone remaining objection
19 which was filed by a group called the RIDE Investor Group.
20 The RIDE Investor Group filed a post-petition punitive class
21 action against the debtor's chief executive officer and chief
22 financial officer. It was in the nature of a 10(b)(5) plans
23 related to their ownership of stock.

24 That group has also filed a purported class proof
25 of claim or three class proofs of claim. I'll note that they

1 have not sought authority to file on behalf of the class, let
2 alone obtained that authority. That's not for today, Your
3 Honor. I'm just noting that as background.

4 We submit that the objection should be overruled,
5 and I'll get to the objection momentarily, but I'd like to
6 start with the standard for approval of a disclosure
7 statement and that standard, as set forth in Section 1125 of
8 the Bankruptcy Code, is that the disclosure statement is to
9 provide adequate information, which is information of a kind,
10 and in sufficient detail, to enable a hypothetical investor
11 of the relevant class to make an informed judgment about the
12 Plan.

13 Your Honor, this disclosure statement is robust.
14 It includes all of the various categories of information the
15 Courts have considered in terms of being relevant to a
16 hypothetical investor and I don't believe that there's any
17 real dispute about whether or not, from an adequate
18 information perspective, this disclosure passes muster and
19 it's ripe for approval under the standard set forth in 1125.

20 Notwithstanding that robust disclosure, the RIDE
21 Investor Group is pressing an objection, and they filed two
22 pleadings. They filed an objection to the initial disclosure
23 statement and then they filed a supplemental objection
24 yesterday.

25 As regard to the initial objection, the debtors,

1 in their reply, noted the various items that had been
2 included to accommodate the RIDE objection. That includes
3 adding significant additional disclosure regarding the claims
4 brought against the company, including RIDE litigation,
5 adding litigation clarifying the rights of all parties with
6 respect to insurance and so as not to prejudice anyone,
7 including language that was proposed by the RIDE claimants,
8 adding language describing how the debtors will preserve
9 evidence germane to punitive class actions, including the
10 RIDE class action. And as I will get to, the debtors also
11 carve out the RIDE investor lead plaintiffs from the
12 definition of releasing parties under the Plan.

13 Nonetheless, the RIDE Investor Group filed a
14 supplemental objecting yesterday, which indicates that the
15 RIDE objectors -- RIDE Investor Group, I'm sorry, continues
16 to take issue with the releases contained in the Plan and in
17 paragraph 17 of that supplemental objection, they indicate
18 that their concern is that those releases would bind to the
19 releases punitive class members who do not return a ballot.

20 Your Honor, that objection is -- it's incorrect
21 based on an incorrect assertion. We believe it's without
22 merit and should be overruled.

23 I'll begin with the following. The Plan has never
24 sought to make any third party releases binding on impaired
25 creditors or shareholders who don't return a ballot, nor has

1 the Plan ever sought to impose non-consensual third-party
2 releases.

3 I'll be clear, the Plan that is on file and that
4 we are seeking to solicit includes, as releasing parties --
5 and we heard Your Honor about needing to consent to the
6 releases. It includes, as releasing parties, only creditors
7 and shareholders who vote to accept the Plan or creditors and
8 shareholders who vote to reject the Plan could opt into the
9 releases. It also includes certain related parties, to the
10 extent that they can be bound by the foregoing, but these are
11 entirely consensual releases. They are consistent with Your
12 Honor's prior holdings that a party may express consent by
13 voting in favor of the Plan, or otherwise opting in, and
14 we've cited the Quorum Decision. We've cited your Decision
15 in Washington Mutual. The ballots all made clear that by
16 voting to accept the Plan, the parties are binding themselves
17 and releasing parties. It's right next to the checkmark --
18 check the box for accepting the Plan.

19 In paragraph 15 of the supplemental objection, the
20 RIDE group concedes as much by noting that this is an opt-in
21 form. So the debtors have created a true consensual regime I
22 think beyond any doubt.

23 The debtors have also gone further, as I've noted,
24 in trying to accommodate the RIDE Investor Group by carving
25 out from the definition of releasing party, the lead

1 plaintiffs, with respect to the post-petition securities
2 litigation, as well as other class representatives due to
3 class litigations.

4 Now, in the RIDE supplemental objection, the RIDE
5 plaintiffs noted that, initially, the carveout applied only
6 to a single lead plaintiff. That was inadvertent. We've now
7 added all RIDE purported lead plaintiffs.

8 However, because the RIDE class action has not
9 been certified and there is uncertainty about the RIDE
10 Investor Group's authority to bind purported class members,
11 the debtors have also included provisions in the third party
12 release that reserve rights on that issue and that clarified
13 that if the RIDE group's exclusion -- the RIDE lead
14 plaintiff's exclusion is not binding on class members, then
15 any class members that are releasing parties; that is any
16 class members who vote in favor of the Plan or who vote to
17 reject but otherwise opt in, they'll be deemed to release
18 their claims, including claims related to the RIDE action.
19 But that provision, unlike what is set forth in the RIDE
20 supplemental objection, only applies to class members that
21 are releasing parties. It doesn't apply to anyone who hasn't
22 returned a ballot. It doesn't apply to anyone who hasn't
23 consented to the release. It's entirely voluntary.

24 Importantly, the RIDE Investor Group's arguments
25 about non-consensual releases we believe are entirely

1 misplaced. There are no such releases in the Plan.

2 There is also an argument in the supplemental
3 objection that the debtors should remove from the release
4 defendants and officers -- directors and officers who are
5 defendants in the litigation. Your Honor, that arguments
6 goes to the scope of the releases and it's a Plan
7 confirmation objection. It's not a disclosure statement
8 objection.

9 Courts have virtually uniformly held that the
10 issues related to scope and propriety of releases are to be
11 determined at confirmation when there is an appropriate
12 evidentiary record, and in paragraph 35 of our reply, we cite
13 a number of cases for that proposition.

14 With that said, I'll again note these releases are
15 consensual releases, so they don't raise the same types of
16 concerns but, in any event, the proper forum is to consider
17 this is at confirmation and the rights for the RIDE Investor
18 Group are fully preserved to make whatever arguments they
19 wish to make at confirmation.

20 We, therefore, submit that the objection should be
21 overruled as premature -- as a premature confirmation
22 statement objection. We submit that the disclosure statement
23 satisfies the requirements for approval and we would ask that
24 Your Honor enter the disclosure statement approval order.

25 Thank you, Your Honor.

1 THE COURT: Thank you. I'll hear from counsel for
2 the RIDE investors then.

3 MR. MANTHEY: Good morning, Your Honor. Tristan
4 Manthey, with Fishman & Haygood, along with my co-counsel,
5 Garvan McDaniel, who's Delaware counsel for the RIDE Investor
6 Group.

7 First, I want to thank Mr. Turetsky and his group.
8 You know, they have gone a very long way from the initial
9 disclosure statement and Plan and made significant
10 modifications that we appreciate and I thank them for that.

11 With that said, Your Honor, we don't think it's
12 all the way there yet and that's why we maintained our
13 objection.

14 Mr. Turetsky appropriately summarizes our
15 objection. We don't believe anybody in the RIDE Investor
16 Group, if they understood what they were doing in terms of
17 the release would release these parties. We ask that all of
18 the RIDE Investor Group -- potential members of the RIDE
19 Investor Group, after class certified, would be carved out.
20 They did not agree to that.

21 We appreciate that the ballot now has the opt-in
22 feature as to the voters who reject the Plan. However, we
23 also think it should have an opt-in feature for voters who
24 accept the Plan. We believe that the ballot should be
25 modified to not only provide for acceptance of the treatment

1 of the Plan, but also an opt-in feature for the release.
2 That's the first main issue with the current solicitation
3 package.

4 The second issue, Your Honor, which I'm surprised
5 on why the debtors have not been agreeable to is there is a
6 reservation that has been set forth for both Class 8 and
7 Class 10 in the Plan that provides, basically, that any
8 treatment under the Plan does not release any of their
9 recoveries as class members of the Delaware shareholder class
10 action in Class A and in the Ohio secured class action claims
11 in Class 10.

12 We ask for similar language to be inserted in
13 Class 9, and while that request was made this morning, that
14 request was not accepted.

15 THE COURT: And what is --

16 MR. MANTHEY: With those --

17 THE COURT: What is the language you're asking
18 for?

19 MR. MANTHEY: Your Honor, it basically sets forth
20 any treatment set forth in this Article 3(b)(9) shall not
21 affect or release any of the rights of any person to obtain
22 recoveries as a class member of any class certified in
23 connection with -- and they define it as the post-petition
24 securities litigation, if any.

25 So we think that language is wholly appropriate to

1 be added into the Plan at 9 and, again, we would reiterate,
2 Your Honor, that we think, again, these documents are
3 extremely voluminous and that's when -- there's going to be a
4 -- there's probably going to be a letter from the Equity
5 Committee; I'm not even sure if that's been part of the
6 solicitation package, recommending voting in favor of this
7 Plan, and people may blindly vote in favor of this Plan
8 without understanding the full ramifications of what they're
9 doing. There are many members of the RIDE Investor Group who
10 don't know about the RIDE Investor Group -- potential members
11 of the RIDE Investor Group who don't know about the lawsuit
12 that has been filed and they may accidentally or, you know,
13 inadvertently accept this Plan based on a recommendation of
14 the Equity Committee and, by that, accidentally -- by that,
15 inadvertently releasing their claims in the RIDE security
16 litigation.

17 So we'd ask for those two changes and, with that,
18 Your Honor, we'd be satisfied with the disclosure statement,
19 again, reserving all of our rights under the Plan
20 confirmation as to the appropriateness of the releases, et
21 cetera.

22 THE COURT: Mr. Turetsky?

23 MR. TURETSKY: Thank you, Your Honor. With
24 respect to the disclosure issue, we have added significant
25 additional disclosure with respect to the RIDE litigation,

1 the existence of the RIDE litigation. That's in Article
2 4(h) (3) of the disclosure statement. We did request -- you
3 know, we've asked throughout if there's any additional
4 disclosures the parties would like us to make, including Mr.
5 Manthey and the RIDE Group. We asked for additional
6 disclosures. We did not receive any. We submit the
7 disclosure is ample. The ballot is actually very clear. It
8 says literally next to the -- if you accept, you are a
9 releasing party under this Plan. On the ballot, there are at
10 least two different places that I can think of where the --
11 where it is indicated that if you accept the Plan, you are
12 deemed to be a releasing party. You are releasing your
13 claims.

14 In terms of why individuals would choose to grant
15 the release, I'll note that, again, this is a confirmation
16 issue. But beyond that, the released parties, who include
17 directors and officers, have certain contractual
18 indemnification rights from the debtors pre-petition. To the
19 extent that those result in claims, that provides ample
20 reason why they -- an equity holder might want to vote in
21 favor of something providing the release, recognizing that if
22 they pursue their claims, they may result in indemnification
23 claims back against the company, which would complete
24 recovery. Again, not a today issue. This is a confirmation
25 issue.

1 In terms of the reservation language that was
2 included, that reservation language was included in the
3 treatment of Class 8, which are the 510(b) claims, and Class
4 10, which is the elective settlement class for 510(b) claims
5 in the event that the lead plaintiff of the Ohio action
6 elects into it.

7 It was intended to resolve a concern of the
8 Delaware class plaintiffs, that by somehow releasing those
9 actions or treating those actions, they would be releasing
10 claims against the Delaware class plaintiffs, but we've made
11 that accommodation to them.

12 This is different. Mr. Manthey is talking about
13 RIDE -- a RIDE litigation that is exactly by the same
14 plaintiffs with respect to the same claims. We're not pre-
15 judging the issue of whether or not treatment impacts the
16 rights of defendants in another -- in the parallel case in
17 the securities action against the CEO and the CFO. They may.
18 They may not. But to pre-judge that issue through Plan
19 treatment I think is not appropriate and, again, that is
20 something that can be raised, should Mr. Manthey wish to
21 raise it at confirmation, and these are clarifications,
22 should they be appropriate, that can be made in the form of a
23 confirmation order, to the extent that everyone agrees. But
24 it's not necessary to do so now.

25 Oh, sorry. May I -- I realized I stopped, but I

1 wanted to make one additional point on the opt-in.

2 We have cited case law for the proposition,
3 including Your Honor's Decision in Quorum and in Washington
4 Mutual that acceptance to a plan constitutes acceptance to
5 the releases. We believe that's particularly appropriate
6 here where it's very clear that by accepting the Plan you are
7 accepting the releases.

8 We also cited, Judge -- I believe it was Judge
9 Bernstein's Opinion in Sun Edison where that same proposition
10 -- these were opt-in -- these are opt-in courts saying that
11 an accepting vote counts as an opt-in. So we would note that
12 as well. We believe that an opt -- a further opt-in for an
13 accepting creditor is necessary.

14 THE COURT: Any response, Mr. Manthey?

15 MR. MANTHEY: Thank you, Your Honor.

16 I guess we're talking about clarity. If we're
17 talking about clarity, what makes it clearer than them
18 actually opting into the release and checking a box for the
19 release? I mean, again, we're dealing with people who are --
20 do not have the benefit of counsel and should be abundantly
21 clear that they want to provide a release to the debtor.

22 As to the language that we requested also be added
23 to Class 9, I don't see how that pre-judges anything. It
24 specifically just says that any treatment here doesn't affect
25 any recoveries of a class member in connection with the post-

1 petition securities litigation. I mean it's a pretty simple
2 addition and would ask that that language -- again, we'd ask
3 that the opt-in be provided and that language be added to the
4 disclosure statement and Plan.

5 THE COURT: Mr. Turetsky, with respect to that
6 language that is in Class 8, that's just referenced. Are the
7 Class 8 -- and that's the Delaware shareholder class action.
8 Are the defendants in that released parties under the Plan?

9 MR. TURETSKY: I think there is --

10 THE COURT: One.

11 MR. TURETSKY: -- one defendant in that, maybe
12 two. I may be -- it may -- but I think -- it's either one or
13 two, Your Honor.

14 THE COURT: So that if a member of Class 8 votes
15 in favor of the Plan, notwithstanding that, they may still
16 obtain recoveries from that lawsuit against -- which is
17 against, among others, released parties.

18 MR. TURETSKY: The treatment, Your Honor, itself
19 doesn't impair. However -- and we've got the same carveout
20 for the Delaware litigants as -- the punitive litigants as we
21 do for the RIDE litigants. What we've said is that the
22 Delaware lead plaintiffs are not releasing parties. However,
23 there is a dispute with respect to their -- or uncertainty
24 with respect to their ability to bind punitive class members.
25 To the extent that a punitive class member is a voting party

1 in this case and releases its claims, it would release its
2 claims with respect to the Delaware litigation. So it's
3 exactly the same as the RIDE litigation in that respect.

4 THE COURT: So it would be releasing its right to
5 obtain a recovery?

6 MR. TURETSKY: If the Delaware class plaintiffs --

7 THE COURT: When it's not certified.

8 MR. TURETSKY: Correct. But the treatment doesn't
9 release. The treatment with respect to their Ohio claims or
10 their 510(b) claims does not release.

11 THE COURT: Well, I'm going to save that for a
12 confirmation issue, to the extent the treatments are
13 different. I think the debtor can proceed with the treatment
14 that it has articulated.

15 With respect to the voting issue though, I'm going
16 to overrule the objection as well. I think that I have held,
17 and I believe that if you vote in favor of a plan, you're
18 voting in favor of all parts of it and I don't think that the
19 Court should or even has the power to accept out parts of
20 that or should require the debtor to start listing what
21 you're accepting yourself out of when you accept the Plan.
22 This could go on infinitum, really.

23 So I think that if a party accepts the Plan, it's
24 bound by the terms of that Plan, including third party
25 releases. The disclosure and notice given of those are, you

1 know, the usual procedures and perfectly adequate and have
2 been litigated quite a bit. So I'm not -- especially with
3 the U.S. Trustee having settled it's objection. I'm
4 satisfied that they're satisfied that the notice is
5 appropriate, so I'll overrule that objection as well.

6 MR. TURETSKY: Thank you, Your Honor.

7 MR. MANTHEY: Thank you, Your Honor.

8 THE COURT: Anybody else?

9 MR. LAWALL: Your Honor, if you've moved off this
10 issue, on behalf of the Committee, we just have a couple of
11 comments if that would be appropriate.

12 THE COURT: Okay. Mr. Lawall?

13 MR. LAWALL: Thank you, Your Honor, and good
14 morning. Fran Lawall and Deborah Kovsky, on behalf of the
15 Official Unsecured Creditors Committee.

16 Thank you for providing us time this morning.
17 Just a couple of points. The Committee does support the
18 disclosure statement.

19 Your Honor, one point that may come up down the
20 road is that the Plan provides for the creation of a reserve
21 for purposes of hopefully satisfying the intent of this Plan
22 to pay unsecured creditors in full.

23 The debtors and the Committee will be working on
24 that issue to establish that reserve but if, in fact, we're
25 unable to determine the equity of appropriate reserve, that

1 would become a confirmation issue, not a today issue. We
2 just wanted to give you a heads-up on that.

3 THE COURT: Okay.

4 MR. LAWALL: Second, Your Honor, the Committee
5 intends to issue a letter in support of the Plan and, Your
6 Honor, we were seeking your guidance as to whether, number
7 one, if it's okay that we send such a letter and, number two,
8 Your Honor, would you like to review the letter before it's
9 include in the debtor's solicitation package?

10 THE COURT: It's a letter in support? I have no
11 problem with it being included.

12 Mr. Turetsky, do you want it to be submitted under
13 certification of counsel and reviewed?

14 MR. TURETSKY: If Your Honor has no issue, then I
15 have no issue. We haven't received the letter yet or, if we
16 did, it was a draft. I haven't had an opportunity to look at
17 it, but I anticipate that we would include it in the
18 solicitation package.

19 THE COURT: Okay. So --

20 MR. LAWALL: Your Honor, with that -- I'm sorry.

21 THE COURT: Go ahead.

22 MR. LAWALL: I was going to say, with that, Your
23 Honor, the Committee has no further comments.

24 THE COURT: Thank you.

25 MR. LAWALL: Thank you.

1 THE COURT: Anybody else?

2 MR. SILVERBERG: Your Honor, it's Bennett
3 Silverberg, of Brown Rudnick, on behalf of the Equity
4 Committee. Are you able to hear me?

5 THE COURT: I can.

6 MR. SILVERBERG: Thank you, Your Honor. Your
7 Honor, we have a similar request on behalf of the Equity
8 Committee. The Equity Committee is obviously in support of
9 the disclosure statement and the Plan as well.

10 We have a letter which we prepared reflecting our
11 support of the Plan and encouraging shareholders to vote in
12 favor of the Plan, similar to Mr. Lawall's request. We would
13 ask that the -- our solicitation letter be included in the
14 materials transmitted to shareholders. We provided a draft
15 of our letter to the debtors in advance of this hearing and
16 would be happy to incorporate any comments that they may
17 have.

18 THE COURT: All right. Mr. Turetsky, same
19 procedure?

20 MR. TURETSKY: Yes, Your Honor.

21 THE COURT: All right. I need not see it then.

22 MR. SILVERBERG: Thank you, Your Honor.

23 THE COURT: Anybody else? Mr. Jaffe?

24 MR. JAFFE: Your Honor, Henry Jaffe, for the
25 Delaware class plaintiffs.

1 Your Honor, we did resolve our disclosure
2 statement objections with the debtors. However, in doing so,
3 we resolved it based upon the solicitation package that we
4 received, and that was filed on the docket.

5 As it relates to the Committee's letter, of
6 course, that's an entirely appropriate Committee member --
7 Unsecured Creditors or CP were supposed to receive full
8 distribution and interest. But I will say, Your Honor, with
9 respect to equity, those who vote in favor of the Plan will
10 be releasing third party claims that are included in our
11 litigation.

12 Had I known there was going to be an equity
13 letter, we would've need to have seen that, approve that, and
14 I might have insisted, Your Honor, that we be permitted to
15 submit our own letter because, Your Honor, we would be
16 recommending to those parties or potential members of our
17 class action that they not vote in favor of the Plan or they
18 abstain from voting or reject the Plan and not opt in.

19 So there's actually significant prejudice that
20 could arise if they vote in favor of the Plan, releasing some
21 of the third party Plans [sic] and that needs to be addressed
22 and, literally, this was just raised here at the hearing.

23 MR. MANTHEY: Your Honor? Your Honor, on behalf
24 of the RIDE Investor Group, we would join Mr. Jaffe with that
25 objection.

1 This is the first we've heard about it. I
2 mentioned that they might have a letter but, again, we
3 haven't seen a letter and, based upon a prejudice to our
4 potential class members, we have significant objection to add
5 -- a letter being added at this late date.

6 THE COURT: And, Mr. Etkin, do you wish to be
7 heard?

8 MR. ETIKIN: Thank you, Your Honor. Yeah. I'll
9 chime in with respect to that significant concern about an
10 equity committee letter for the same reasons.

11 It could have a dramatic impact on the third party
12 releases that are outstanding in this case, the issues that
13 it would create. So, at the very least, I think we need to
14 see that letter and be able to comment on it and I also
15 believe that Mr. Jaffe is correct, that there should be some
16 counterbalance here with respect to all of our constituency
17 in this case who don't necessarily see the -- see things the
18 same way as the Equity Committee does because we're
19 representing all of us defrauded investors.

20 If you pull back the curtain a little bit, members
21 of the Equity Committee are folks who purchased perhaps
22 immediately before or immediately after the bankruptcy
23 filing, so they don't have the same interests that we have
24 with respect to those who lose hundreds of millions of
25 dollars on this stock.

1 THE COURT: Well, let me hear from counsel for the
2 Equity Committee.

3 MR. STARK: Your Honor, it's Robert Stark. I --
4 my partner, Ben Silverberg, has been delivering with the
5 arguments so far. I'm not going to intercede but, obviously,
6 I have views and so Your Honor may hear them later, but I'll
7 otherwise cede the podium to Mr. Silverberg (indiscernible)
8 we pause that's fine.

9 THE COURT: Mr. Silverberg?

10 MR. SILVERBERG: Happy to yield to Mr. Stark, Your
11 Honor.

12 The Equity Committee has spent the last two months
13 negotiating this Plan on behalf of all equity holders, our
14 constituency. We believe that this Plan reflects remarkable
15 improvement over the initially proposed Plan.

16 I think throughout the disclosure statement, there
17 has been commentary that's been added at the request of the
18 various securities plaintiffs reflecting their views on the
19 Plan, reflecting their oppositions with treatment of certain
20 classes of the securities plaintiffs' claims. So their views
21 are incorporated into the disclosure statement already.

22 Our views reflect that of the Official Equity
23 Committee and the Official Equity Committee's views alone.

24 MR. STARK: Your Honor, if I may add some more
25 words. I would bet having two lawyers from the same advocacy

1 is uncommon, so let me pause, if Your Honor will allow.

2 THE COURT: I will allow it.

3 MR. STARK: Thank you, Your Honor. I don't mean
4 -- look, I'm not that unsympathetic to the views that the
5 counsel has raised.

6 It -- we're an Official Committee. Official
7 Committees negotiate Plans and they submit letters and
8 solicitation packages for their constituents. We are
9 separately classified from their constituents, urging them,
10 based upon the work that we've done as an official
11 representative of that body, to move forward.

12 This is normal proforma. Mr. Etkin, who's been
13 around Bankruptcy Courts his entire career, knows this. He
14 represents Official Committees all the time. His firm does
15 too. Right? This isn't strange behavior. This is what's
16 known.

17 So the notion Mr. Jaffe raises that, oh my gosh,
18 something new and strange is happening because an Official
19 Committee who's been working with and was announced last week
20 was working with the debtors on the consensual Plan wants to
21 convey to the stockholders that were supportive of the Plan.
22 It's nothing new, nothing, you know, hurting -- no new ground
23 here.

24 The views of their constituents have been
25 reflected in the negotiated document, negotiated language in

1 the revised disclosure statement. That language is pretty
2 clear where it comes from. Didn't come from the debtor. It
3 came from them. The fact that it's in a separate letter is
4 nothing new and nothing different and it doesn't need a
5 change on the Plan at all.

6 MR. TURETSKY: Your Honor, may I be heard?

7 THE COURT: You may.

8 MR. TURETSKY: I just want to make one point.
9 There is language in the disclosure statement that has
10 reflected throughout that the -- and since we've filed the
11 amended disclosure statement, that the Equity Committee and
12 the Creditors Committee each support and urge holders to vote
13 in favor of the plan. So this is not -- this should not be a
14 surprise to anybody, and I'll leave it at that.

15 THE COURT: Well, I am aware that the reason
16 Equity and Creditor's Committees want to send a letter with
17 the package is to highlight their position, rather than have
18 it hidden in the Plan or disclosure statement.

19 I think this is an unusual case and I think that,
20 at a minimum -- I don't want, you know, 20 letters going with
21 the package, but I think, at a minimum, Mr. Stark or Mr.
22 Silverberg, perhaps the Equity Committee can include a line
23 saying that the Class 8 -- what is it, 8, 9, and 10, that the
24 purported class action representatives believe that the
25 members in their class should vote against the Plan, or at

1 least should be aware that if they vote in favor of the Plan,
2 that they are granting third party releases. Can you work
3 out language with Mr. Etkin and Mr. Jaffe and the other
4 parties?

5 MR. SILVERBERG: We would, Your Honor.

6 MR. STARK: We would be --

7 MR. SILVERBERG: Sorry.

8 MR. STARK: We would be pleased to do that, Your
9 Honor. That's not a problem at all.

10 THE COURT: Okay. All right. I think that is the
11 last issue, correct, Mr. Turetsky? I see no more --

12 MR. TURETSKY: I believe --

13 THE COURT -- no more hands.

14 MR. TURETSKY: I believe so. But if Your Honor
15 has any questions, which I always know is a dangerous
16 statement to make, but, from our perspective, I think we
17 would be delighted for Your Honor to enter the disclosure
18 statement order and we'll try and shepherd the Equity
19 Committee's letter through because we would obviously like to
20 get this wrapped up so we can start soliciting.

21 THE COURT: All right. I have no questions. I
22 think I raised them last week. So, yeah, I think I will
23 approve the disclosure statement as containing adequate
24 information for the purposes of voting and we will the debtor
25 go ahead and send out the Plan and disclosure statement and

1 the other solicitation materials that are included in your
2 proposed order and -- when is confirmation again?

3 MR. TURETSKY: That -- Ms. Patterson will
4 intercede and ask about that.

5 THE COURT: Okay.

6 MS. PATTERSON: Thank you. Thank you. For the
7 record, Your Honor, Morgan Patterson, of Womble Bond
8 Dickinson.

9 We exchanged some emails, Your Honor, with your
10 chambers a week or two ago about the availability at the
11 December 19th hearing, but we haven't confirmed that yet. So
12 if Your Honor has that information, that would be great. If
13 not, I can follow up with Ms. Kapp (phonetic) after the
14 hearing.

15 THE COURT: Well, Ms. Capp has been away for a
16 week, which --

17 MS. PATTERSON: Okay.

18 THE COURT: The -- so you're looking for the week
19 of what?

20 MS. PATTERSON: We were looking for December 19th.
21 Ms. Kapp had mentioned that you had an opening on that day.

22 THE COURT: I am free December 19th at 2:00. How
23 does that look?

24 MS. PATTERSON: That works for us. That's great,
25 Your Honor. And we'll plug in that time. We have the date

1 and we'll plug in that time and then we'll upload the order
2 if that's okay with Your Honor.

3 THE COURT: That's fine.

4 MS. PATTERSON: I think that's all I had from our
5 perspective, Your Honor, as far as the hearing.

6 THE COURT: All right. Then we can stand
7 adjourned and thank you to everybody for working this out.

8 COUNSEL: Thank you, Honor.

9 THE COURT: We'll stand adjourned.

10 (Proceedings concluded at 11:08 a.m.)
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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ Tammy L. Kelly

November 1, 2023

Tammy L. Kelly

Court Transcriptionist For Reliable